

SENATE SUBSTITUTE

FOR

SENATE COMMITTEE SUBSTITUTE

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HOUSE COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 697

AN ACT

To repeal sections 190.839, 198.439, 208.437, 208.480, 338.550, and 633.401, RSMo, and to enact in lieu thereof eight new sections relating to the expiration of certain state programs.

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

1 Section A. Sections 190.839, 198.439, 208.437, 208.480,  
2 338.550, and 633.401, RSMo, are repealed and eight new sections  
3 enacted in lieu thereof, to be known as sections 190.839,  
4 198.439, 208.437, 208.480, 338.550, 536.032, 536.175, and  
5 633.401, to read as follows:

6 190.839. Sections 190.800 to 190.839 shall expire on  
7 September 30, ~~[2011]~~ 2014.

8 198.439. Sections 198.401 to 198.436 shall expire on  
9 September 30, ~~[2011]~~ 2014.

10 208.437. 1. A Medicaid managed care organization  
11 reimbursement allowance period as provided in sections 208.431 to  
12 208.437 shall be from the first day of July to the thirtieth day  
13 of June. The department shall notify each Medicaid managed care  
14 organization with a balance due on the thirtieth day of June of

1 each year the amount of such balance due. If any managed care  
2 organization fails to pay its managed care organization  
3 reimbursement allowance within thirty days of such notice, the  
4 reimbursement allowance shall be delinquent. The reimbursement  
5 allowance may remain unpaid during an appeal.

6 2. Except as otherwise provided in this section, if any  
7 reimbursement allowance imposed under the provisions of sections  
8 208.431 to 208.437 is unpaid and delinquent, the department of  
9 social services may compel the payment of such reimbursement  
10 allowance in the circuit court having jurisdiction in the county  
11 where the main offices of the Medicaid managed care organization  
12 are located. In addition, the director of the department of  
13 social services or the director's designee may cancel or refuse  
14 to issue, extend or reinstate a Medicaid contract agreement to  
15 any Medicaid managed care organization which fails to pay such  
16 delinquent reimbursement allowance required by sections 208.431  
17 to 208.437 unless under appeal.

18 3. Except as otherwise provided in this section, failure to  
19 pay a delinquent reimbursement allowance imposed under sections  
20 208.431 to 208.437 shall be grounds for denial, suspension or  
21 revocation of a license granted by the department of insurance,  
22 financial institutions and professional registration. The  
23 director of the department of insurance, financial institutions  
24 and professional registration may deny, suspend or revoke the  
25 license of a Medicaid managed care organization with a contract  
26 under 42 U.S.C. Section 1396b(m) which fails to pay a managed  
27 care organization's delinquent reimbursement allowance unless  
28 under appeal.

1           4. Nothing in sections 208.431 to 208.437 shall be deemed  
2 to effect or in any way limit the tax-exempt or nonprofit status  
3 of any Medicaid managed care organization with a contract under  
4 42 U.S.C. Section 1396b(m) granted by state law.

5           5. Sections 208.431 to 208.437 shall expire on September  
6 30, ~~[2011]~~ 2014.

7           208.480. Notwithstanding the provisions of section 208.471  
8 to the contrary, sections 208.453 to 208.480 shall expire on  
9 September 30, ~~[2011]~~ 2014.

10           338.550. 1. The pharmacy tax required by sections 338.500  
11 to 338.550 shall expire ninety days after any one or more of the  
12 following conditions are met:

13           (1) The aggregate dispensing fee as appropriated by the  
14 general assembly paid to pharmacists per prescription is less  
15 than the fiscal year 2003 dispensing fees reimbursement amount;  
16 or

17           (2) The formula used to calculate the reimbursement as  
18 appropriated by the general assembly for products dispensed by  
19 pharmacies is changed resulting in lower reimbursement to the  
20 pharmacist in the aggregate than provided in fiscal year 2003; or

21           (3) September 30, ~~[2011]~~ 2014.

22 The director of the department of social services shall notify  
23 the revisor of statutes of the expiration date as provided in  
24 this subsection. The provisions of sections 338.500 to 338.550  
25 shall not apply to pharmacies domiciled or headquartered outside  
26 this state which are engaged in prescription drug sales that are  
27 delivered directly to patients within this state via common  
28 carrier, mail or a carrier service.

1           2. Sections 338.500 to 338.550 shall expire on September  
2 30, [2011] 2014.

3           536.032. Upon the filing of a request by a state agency  
4 with the joint committee on administrative rules and the  
5 secretary of state concurrently, and after publication in the  
6 Missouri Register, the secretary of state shall have the  
7 authority to make nonsubstantive changes to the Code of State  
8 Regulations to update changes in department or division name  
9 information in response to statutory changes or executive orders,  
10 or to changes in state agency address, state agency telephone  
11 numbers, email addresses, or state agency website addresses.

12           536.175. 1. On an annual basis, the joint committee on  
13 administrative rules shall provide to each state agency a list of  
14 rules which became effective thirty years prior and have not been  
15 modified, any rules that were promulgated based on statutory  
16 authority that has sunset or expired, and any rules that the  
17 joint committee determines may be obsolete, ineffective, or  
18 outdated. A request for an informational report shall accompany  
19 each list of rules.

20           2. Within ninety days after being provided the list of  
21 rules by the joint committee, the agency shall submit its  
22 informational report to the joint committee. The informational  
23 report shall include a determination of whether each of the rules  
24 listed should be continued without amendment, be amended, or be  
25 rescinded, taking into consideration the purpose, scope, and  
26 intent of the statute under which the rule was adopted. In  
27 making its determinations, the agency shall consider the  
28 following:

1 (1) Whether the rule needs amendment or rescission to  
2 eliminate unnecessary paperwork;

3 (2) Whether the rule duplicates, overlaps with, or  
4 conflicts with other rules or statutes;

5 (3) Whether the statutory authority for the rule has sunset  
6 or otherwise expired; and

7 (4) Whether subsequent changes in the subject matter have  
8 rendered the rule obsolete, ineffective, or outdated.

9 3. The joint committee may solicit testimony from the  
10 public at a public meeting regarding any informational report  
11 submitted by an agency under this section. The joint committee  
12 shall submit a recommendation to the general assembly regarding  
13 rules considered under this section. The general assembly may  
14 take such action in response to the recommendation as it finds  
15 appropriate.

16 633.401. 1. For purposes of this section, the following  
17 terms mean:

18 (1) "Engaging in the business of providing health benefit  
19 services", accepting payment for health benefit services;

20 (2) "Intermediate care facility for the mentally retarded",  
21 a private or department of mental health facility which admits  
22 persons who are mentally retarded or developmentally disabled for  
23 residential habilitation and other services pursuant to chapter  
24 630. Such term shall include habilitation centers and private or  
25 public intermediate care facilities for the mentally retarded  
26 that have been certified to meet the conditions of participation  
27 under 42 CFR, Section 483, Subpart 1;

28 (3) "Net operating revenues from providing services of

1 intermediate care facilities for the mentally retarded" shall  
2 include, without limitation, all moneys received on account of  
3 such services pursuant to rates of reimbursement established and  
4 paid by the department of social services, but shall not include  
5 charitable contributions, grants, donations, bequests and income  
6 from nonservice related fund-raising activities and government  
7 deficit financing, contractual allowance, discounts or bad debt;

8 (4) "Services of intermediate care facilities for the  
9 mentally retarded" has the same meaning as the term used in Title  
10 42 United States Code, Section 1396b(w) (7) (A) (iv), as amended,  
11 and as such qualifies as a class of health care services  
12 recognized in federal Public Law 102-234, the Medicaid Voluntary  
13 Contribution and Provider Specific Tax Amendment of 1991.

14 2. Beginning July 1, 2008, each provider of services of  
15 intermediate care facilities for the mentally retarded shall, in  
16 addition to all other fees and taxes now required or paid, pay  
17 assessments on their net operating revenues for the privilege of  
18 engaging in the business of providing services of the  
19 intermediate care facilities for the mentally retarded or  
20 developmentally disabled in this state.

21 3. Each facility's assessment shall be based on a formula  
22 set forth in rules and regulations promulgated by the department  
23 of mental health.

24 4. For purposes of determining rates of payment under the  
25 medical assistance program for providers of services of  
26 intermediate care facilities for the mentally retarded, the  
27 assessment imposed pursuant to this section on net operating  
28 revenues shall be a reimbursable cost to be reflected as timely

1 as practicable in rates of payment applicable within the  
2 assessment period, contingent, for payments by governmental  
3 agencies, on all federal approvals necessary by federal law and  
4 regulation for federal financial participation in payments made  
5 for beneficiaries eligible for medical assistance under Title XIX  
6 of the federal Social Security Act.

7 5. Assessments shall be submitted by or on behalf of each  
8 provider of services of intermediate care facilities for the  
9 mentally retarded on a monthly basis to the director of the  
10 department of mental health or his or her designee and shall be  
11 made payable to the director of the department of revenue.

12 6. In the alternative, a provider may direct that the  
13 director of the department of social services offset, from the  
14 amount of any payment to be made by the state to the provider,  
15 the amount of the assessment payment owed for any month.

16 7. Assessment payments shall be deposited in the state  
17 treasury to the credit of the "Intermediate Care Facility  
18 Mentally Retarded Reimbursement Allowance Fund", which is hereby  
19 created in the state treasury. All investment earnings of this  
20 fund shall be credited to the fund. Notwithstanding the  
21 provisions of section 33.080 to the contrary, any unexpended  
22 balance in the intermediate care facility mentally retarded  
23 reimbursement allowance fund at the end of the biennium shall not  
24 revert to the general revenue fund but shall accumulate from year  
25 to year. The state treasurer shall maintain records that show  
26 the amount of money in the fund at any time and the amount of any  
27 investment earnings on that amount.

28 8. Each provider of services of intermediate care

1 facilities for the mentally retarded shall keep such records as  
2 may be necessary to determine the amount of the assessment for  
3 which it is liable under this section. On or before the  
4 forty-fifth day after the end of each month commencing July 1,  
5 2008, each provider of services of intermediate care facilities  
6 for the mentally retarded shall submit to the department of  
7 social services a report on a cash basis that reflects such  
8 information as is necessary to determine the amount of the  
9 assessment payable for that month.

10 9. Every provider of services of intermediate care  
11 facilities for the mentally retarded shall submit a certified  
12 annual report of net operating revenues from the furnishing of  
13 services of intermediate care facilities for the mentally  
14 retarded. The reports shall be in such form as may be prescribed  
15 by rule by the director of the department of mental health.  
16 Final payments of the assessment for each year shall be due for  
17 all providers of services of intermediate care facilities for the  
18 mentally retarded upon the due date for submission of the  
19 certified annual report.

20 10. The director of the department of mental health shall  
21 prescribe by rule the form and content of any document required  
22 to be filed pursuant to the provisions of this section.

23 11. Upon receipt of notification from the director of the  
24 department of mental health of a provider's delinquency in paying  
25 assessments required under this section, the director of the  
26 department of social services shall withhold, and shall remit to  
27 the director of the department of revenue, an assessment amount  
28 estimated by the director of the department of mental health from

1 any payment to be made by the state to the provider.

2 12. In the event a provider objects to the estimate  
3 described in subsection 11 of this section, or any other decision  
4 of the department of mental health related to this section, the  
5 provider of services may request a hearing. If a hearing is  
6 requested, the director of the department of mental health shall  
7 provide the provider of services an opportunity to be heard and  
8 to present evidence bearing on the amount due for an assessment  
9 or other issue related to this section within thirty days after  
10 collection of an amount due or receipt of a request for a  
11 hearing, whichever is later. The director shall issue a final  
12 decision within forty-five days of the completion of the hearing.  
13 After reconsideration of the assessment determination and a final  
14 decision by the director of the department of mental health, an  
15 intermediate care facility for the mentally retarded provider's  
16 appeal of the director's final decision shall be to the  
17 administrative hearing commission in accordance with sections  
18 208.156 and 621.055.

19 13. Notwithstanding any other provision of law to the  
20 contrary, appeals regarding this assessment shall be to the  
21 circuit court of Cole County or the circuit court in the county  
22 in which the facility is located. The circuit court shall hear  
23 the matter as the court of original jurisdiction.

24 14. Nothing in this section shall be deemed to affect or in  
25 any way limit the tax-exempt or nonprofit status of any  
26 intermediate care facility for the mentally retarded granted by  
27 state law.

28 15. The director of the department of mental health shall

1 promulgate rules and regulations to implement this section. Any  
2 rule or portion of a rule, as that term is defined in section  
3 536.010, that is created under the authority delegated in this  
4 section shall become effective only if it complies with and is  
5 subject to all of the provisions of chapter 536 and, if  
6 applicable, section 536.028. This section and chapter 536 are  
7 nonseverable and if any of the powers vested with the general  
8 assembly pursuant to chapter 536 to review, to delay the  
9 effective date, or to disapprove and annul a rule are  
10 subsequently held unconstitutional, then the grant of rulemaking  
11 authority and any rule proposed or adopted after August 28, 2008,  
12 shall be invalid and void.

13 16. The provisions of this section shall expire on  
14 September 30, [2011] 2014.